

**NEW YORK STATE OFFICE FOR THE AGING**

2 Empire State Plaza, Albany, NY 12223-1251

Andrew M. Cuomo, Governor

Greg Olsen, Acting Director

An Equal Opportunity Employer

**INFORMATION MEMORANDUM**

**Number 13-IM-03**

**Supersedes**

**Expiration Date**

**DATE:** February 15, 2013

**TO:** Area Agency on Aging (AAA) Directors

**SUBJECT: Employee or Independent Contractor?**

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**PURPOSE:** The purpose of this Information Memorandum is to inform the area agencies on aging (AAA) of the issues that may arise when contracting with an individual to provide services or perform tasks or functions.

**BACKGROUND:** The IRS has recently conducted audits of county governmental agencies who have contracted with individuals where the issue has arisen as to whether the individual is an independent contractor or an employee of the county. Although the initial assumption of the AAA might be that the individual is being retained as an "independent contractor" the IRS has concluded that in certain situations the individual is an employee of the AAA. Sometimes a person or entity may believe that the relationship being established is an independent contractor relationship, however, under federal and state laws the relationship might constitute employment.

AAAs should consult with the county attorney before entering into a contract with an individual. There are many factors that are considered in determining whether or not an employment relationship has been established under federal or state law. Both the Workers' Compensation Board and the New York State Labor Department have guidance on their respective websites as to what constitutes employment versus an independent contractor relationship. The New York State Office for the Aging (NYSOFA) is providing the following links because they contain information that may be of assistance in analyzing the nature of the relationship being established.

<http://www.labor.ny.gov/ui/dande/ic.shtm>

[http://www.wcb.ny.gov/content/main/Employers/Coverage\\_wc/emp\\_empDefinition.jsp](http://www.wcb.ny.gov/content/main/Employers/Coverage_wc/emp_empDefinition.jsp)

**PROGRAMS AFFECTED:**

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| <input type="checkbox"/> Other:      |  |  |                                 |                                 |

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